Supreme Court, U.S.
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No. 97-322

In The

Supreme Court of the United States

October Term, 1996

KAREN F. ALEXANDER,

Petitioner,

v.

CHRISTINE TODD WHITMAN, et al.,

Respondents.

On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Third Circuit

BRIEF IN OPPOSITION OF RESPONDENT ELTON A. CONDA SURROGATE OF BURLINGTON COUNTY

EVAN H.C. CROOK
Solicitor, Burlington County

JEAN HARTMAN CULP*
Assistant Solicitor
Burlington County
49 Rancocas Road
Room 225
Mount Holly, New Jersey 08065
609-265-5555

Attorney For Respondent

**Counsel of Record*

PARTY TO THE PROCEEDINGS

This Opposition to the Petition for Writ of Certiorari is submitted by Elton A. Conda, Surrogate of Burlington, one of the twenty-one county surrogates named in the complaint filed by the Petitioner in the United States District Court.

The Surrogate of Burlington County is an official of the State of New Jersey elected by the people of Burlington County pursuant to art. VII, § 2, ¶ 2 of the New Jersey Constitution.

The Surrogate is bound by and must follow the laws of the State of New Jersey. In accordance with the New Jersey Wrongful Death Act, *N.J.S.A.* 2A:32-1 *et seq.* (1987), the Surrogate issues letters of administration *ad prosequendum*. In accordance with the New Jersey Survival Statute, *N.J.S.A.* 2A:15-3 (1987), the Surrogate issues letters of general administration.

The Surrogate is also bound by the holding of the Supreme Court of New Jersey in *Guardina v. Bennett*, 545 *A*.2d 139 (1988) in which the court held that the New Jersey Wrongful Death Act does not provide a cause of action for parents of an unborn or stillborn fetus. *Id.* at 147. Although not specifically addressed in *Guardina*, both courts below have held that the statutory right to bring an action under either the Wrongful Death Act or the Survival Statute is not to be issued in situations in which a fetus fails to survive until after birth. Pa-11; Pa-44, -45.

Thus, by law, the Surrogate may not issue letters of administration *ad prosequendum* or letters of general

administration to parents or other survivors of an unborn or stillborn fetus.

The Burlington County Surrogate, although named as a defendant by Petitioner in this lawsuit, was not the surrogate to whom Petitioner applied for the letters of administration.

ARGUMENT

The Burlington County Surrogate relies on the Brief in Opposition to the Petition for Writ of Certiorari submitted to this Court by the New Jersey Attorney General on behalf of Governor Christine Todd Whitman and Attorney General Deborah T. Poritz.

CONCLUSION

Respondent Elton A. Conda, Surrogate of Burlington County, New Jersey, respectfully requests this Court to deny the Petition for Writ of Certiorari to the United States Court of Appeals for the Third Circuit filed by Petitioner Karen F. Alexander.

Respectfully submitted,

EVAN H.C. CROOK
Solicitor, Burlington County
Attorney for Respondent
Burlington County Surrogate

BY: JEAN HARTMAN CULP*
Burlington County
Assistant Solicitor

**Counsel of Record*